



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

Date: September 21, 2006

Number: **200650018**

Release Date: 12/15/2006

Contact Person:

Identification Number:

Telephone Number:

Employer Identification Number:

UIL 4943.04.01

Legend:

B =

C =

d =

E =

F =

g =

H =

i =

Dear \_\_\_\_\_ :

This is in response to your letter requesting an extension of the period for transferring excess business holdings under section 4943(c)(6) of the Internal Revenue Code ("Code") for five years pursuant to section 4943(c)(7) of the Code.

Facts:

You are a charitable trust recognized as exempt from federal income tax under section 501(c)(3) of the Code and determined to be a private foundation as described in section 509(a). You are organized for charitable purposes, including support of corporations, trusts, funds, foundations, and community chests created or organized in the United States and operated exclusively for charitable purposes, and have made millions of dollars in grants over the past five years.

You were created by B, who died in 1996 having left his residuary estate to you. This bequest consisted primarily of stocks and other securities. It also included (1) a one-third interest in a farm ("the Farm"), and (2) approximately 33 percent of the stock of C, which owns both an irrigation ditch that runs through the Farm and land adjacent to the ditch. B's estate transferred these interests to you on date d.

You represent that the Farm, the irrigation ditch, and the land adjacent to the ditch (collectively "the Properties") comprise a large and diverse business enterprise consisting of several thousand acres of farmland. At the time of B's death, the Properties consisted of land that included irrigated acres, partially irrigated acres, non-irrigible acres, grasslands, mobile homes,

a farm house, a machine shop, the irrigation ditch, and leased water. During B's life, the Properties were used to grow crops and raise cattle. Revenues from the Properties were derived primarily from leasing pasture land and selling alfalfa and animal grain crops.

At B's death, his estate owned a one-third interest in the Farm and approximately one-third of the stock in C. The remaining two-thirds interest in the Farm was owned in equal one-third shares by E and F. Most of the remaining two-thirds of C stock was owned in equal shares by E and F.

After B's death, you formed an LLC with E and F to take title to the farm and the C stock. On date g, each of you transferred all of your ownership interests in the Farm to the LLC and received equal one-third ownership and profits interests in the LLC. Shortly thereafter, each of you also contributed your stock in C to the LLC.

After this transfer, your trustees, together with the other members of the LLC, resolved to sell the LLC's interests in the Properties and its stock in C. You hired a real estate broker with a well-known reputation to market and sell the Properties and stock pursuant to a listing agreement. Since that time, the LLC has sold 10 parcels of land from the Properties. The LLC has also sold water rights held by C to the state in which the Properties are located.

Over the past two years, the LLC has considered two reasonable offers to purchase the remainder of the Properties and stock. The first offer was not accepted when the buyer did not pay the earnest money promised. The second offer was not accepted when the buyer did not fulfill certain terms of the offer. You represent that it is difficult to sell the Properties because of their size, complicated structure, and because of the limited market for property in the area that is largely non-irrigible.

The LLC is currently in negotiations with H to purchase the remainder of the Properties and C stock. You represent that if this sale is not consummated, the LLC will continue to list and aggressively market the remaining portions of the Properties through its real estate broker, and will use alternative methods to dispose of the Properties. These methods may include internet listings and use of additional brokers. You believe that these steps should enable the LLC to dispose of the Properties before the close of the five-year extension period you have requested.

Your trustees have submitted your plan for disposing of your interests in the Properties and C to your state's Attorney General. The Attorney General has consented in a written response. This consent states that the Attorney General has received a copy of the letter your trustees sent to the Service requesting a five-year extension of time to dispose of these interests, and that the Attorney General consents to this extension.

## LAW

Section 4943(a) of the Code imposes a tax on the excess business holdings of any private foundation in a business enterprise during any tax year which ends during the taxable period.

Section 4943(c)(2)(A) of the Code provides that, in general, the permitted holdings of any private foundation in an incorporated business enterprise are: (i) 20 percent of the voting stock, reduced by (ii) the percentage of the voting stock owned by all disqualified persons.

Section 4943(c)(3) of the Code provides that, in general, the permitted holdings of any private foundation in an unincorporated business enterprise are (i) 20 percent of the profits interest, reduced by (ii) the percentage of the profits interest owned by all disqualified persons.

Section 4943(d)(1) of the Code provides that, in computing the holdings of a private foundation in any business enterprise, any stock or other interest owned, directly or indirectly, by or for a corporation, partnership, estate, or trust, shall be considered as being owned proportionately by or for its shareholders, partners, or beneficiaries.

Section 4943(c)(6)(A) of the Code provides that, if there is a change in the holdings in a business enterprise (other than by purchase by the private foundation or by a disqualified person) which causes the private foundation to have excess business holdings in such enterprise, the interest of the foundation in such enterprise (immediately after such change) shall (while held by the foundation) be treated as held by a disqualified person (other than by the foundation) during the 5-year period beginning on the date of such change in holdings.

Section 4943(c)(7) of the Code provides that the Secretary may extend for an additional 5-year period the initial 5-year period for disposing of excess business holdings in the case of an unusually large gift or bequest of diverse business holdings or holdings with complex corporate structures if--

(A) The foundation establishes that: (i) diligent efforts to dispose of such holdings have been made within the initial 5-year period, and (ii) disposition within the initial 5-year period has not been possible (except at a price substantially below fair market value) by reason of such size and complexity or diversity of holdings,

(B) Before the close of the initial 5-year period: (i) the private foundation submits to the Secretary a plan for disposing of all of the excess business holdings involved in the extension, and (ii) the private foundation submits the plan to the Attorney General (or other appropriate State official) having administrative or supervisory authority or responsibility with respect to the foundation's disposition of the excess business holdings involved and submits to the Secretary any response received by the private foundation from the Attorney General (or other appropriate State official) to such plan during such 5-year period, and

(C) The Secretary determines that such plan can reasonably be expected to be carried out before the close of the extension period.

Section 53.4943-6(b)(1) of the Foundation and Similar Excise Taxes Regulations provides that in the case of an acquisition of holdings in a business enterprise by a private foundation pursuant to the terms of a will or trust, the five-year period described in section 4943(c)(6) shall not commence until the date on which the distribution of such holdings from the estate or trust to the foundation occurs.

## ANALYSIS

You are subject to section 4943 of the Code, which imposes a tax on the excess business holdings of private foundations. Generally, under section 4943(c)(2)(A), a private foundation is permitted to hold twenty percent of the voting stock in a business enterprise with any excess constituting excess business holdings. Similarly, under section 4943(c)(3) a private foundation

is permitted to hold up to twenty percent of the profits interest in an unincorporated business enterprise. However, if a private foundation acquires holdings in a business enterprise other than by purchase (e.g., by bequest from a will) which causes the foundation to have excess business holdings, then the interest of the foundation in such business enterprise shall be treated as held by a disqualified person (rather than the foundation) for a five-year period beginning on the date such holdings were acquired by the foundation, under section 4943(c)(6)(A).

On date d, you received a one-third interest in the Farm and approximately one-third of the stock in C from B's estate. You then conveyed your interest in the Farm to the LLC on date g, and your stock in C to the LLC shortly thereafter. You have represented that the Properties owned by the LLC and C comprise a business enterprise. Accordingly, under section 4943(c)(6)(A) of the Code and section 53.4943-6(b)(1) of the regulations, your interests in the Farm and C are treated as held by a disqualified person for five years beginning on date d. At the close of this five-year period, you would normally be subject to tax under section 4943 of the Code for your excess business holdings in the Properties, since your ownership and profits interests in the Farm and C (through constructive ownership under Section 4943(d)(1) of the Code) both exceed twenty percent.

Under section 4943(c)(7) of the Code, however, the Service may extend the initial five-year period for disposing of excess business holdings for an additional five years if you establish that: (i) you made diligent efforts to dispose of your holdings within the initial five-year period but were unable to do so because of the size and complexity of such holdings, (ii) you submit a plan for disposing of all excess business holdings in the five-year extension period and submit such plan to the state Attorney General, and (iii) the Service determines that such plan can reasonably be expected to be carried out before the close of the extension period.

You have made diligent efforts to dispose of your holdings in the Properties during the initial five-year period, as required by section 4943(c)(7)(A)(i) of the Code. You hired a real estate broker that has listed and actively marketed the Properties, and continues to do so. You have sold approximately 10 parcels from the Properties during the five-year period, and have sold water rights from C to the state in which the Properties are located. You continue to negotiate with H to dispose of the remainder of the Properties.

The information you have submitted indicates that the Properties distributed to you by B were unusually large, and that they were difficult to sell because of the size and complicated structure of the Properties, and the non-irrigible nature of most of the land on the Properties. Given those difficulties, you have established that a complete disposal of all of the Properties during the initial five-year period was not reasonably possible, as required by section 4943(c)(7)(A)(ii) of the Code.

You have submitted to the state Attorney General your plan for disposing of your interests in C and the Properties. The state Attorney General has consented to the plan, as required by section 4943(c)(7)(B)(ii) of the Code. You and the LLC will continue your negotiations with H to sell the remainder of the Properties and the C stock. If this sale is not consummated, you and the LLC will continue to aggressively market the remaining portions of the Properties and the C stock through your real estate broker, and will use other methods to dispose of the Properties that may include internet listings and use of additional brokers.

Accordingly, we determine under section 4943(c)(7)(C) of the Code that your plan for disposing of your excess business holdings in the Farm and C can reasonably be expected to be carried out before the end of a five-year extension period ending on date i, based on the efforts of you and your real estate broker to sell the Properties, and based on your continued negotiations with H to purchase the remainder of the Properties.

We do not rule on whether your interest in the LLC constitutes an excess business holding.

#### CONCLUSION

Accordingly, based on the information submitted we rule that, because you have met the requirements set forth in section 4943(c)(7) of the Code for extending the initial five-year period for disposing of excess business holdings, the period you have to dispose of your excess business holdings in the Farm and C is extended to date i.

This ruling is made on the understanding that there will be no material changes in the facts upon which it is based.

Except as specifically ruled upon above, no opinion is expressed concerning the federal income tax consequences of the transactions described above under any other provision of the Code.

A copy of this letter should be kept in your permanent records.

This ruling letter is directed only to the organization that requested it. Section 6110(k)(3) of the Code provides that they may not be used or cited as precedent. If you have any questions about this ruling, please contact the person whose name and telephone number are shown in the heading of this letter.

In accordance with the Power of Attorney currently on file with the Internal Revenue Service, we are sending a copy of this letter to your authorized representative.

Sincerely,

Steven Godnitzky  
Manager, Exempt Organizations  
Technical Group 1

Enclosure: Notice 437

cc: